IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Shoukat Ghoshi & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.1695/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 3-12-2002 in Sessions Case No.25/2001 passed by Shri Iduddin, RHJS, Additional Sessions Judge (Fast Track) No.1 Bharatpur.

2. Prashant @ Dabbu Vs. State of Rajasthan
(D.B. Criminal Appeal No.351/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 11-3-2004 in Sessions Case No.69/2001 passed by Shri Iduddin, RHJS, Additional Sessions Judge (Fast Track) No.1 Bharatpur.

Date of Judgment: July 11, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. D.G. Chaturvedi] for the appellants.
Mr. Arvind Kumar Gupta]
Mr. Rinesh Gupta]
Mr. Vaibhav Gehlot]
Mr. Virendra Singh]

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Tripurari Sharma, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Shoukat Ghoshi, Prashant @ Dabbu and Vishambhar, appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) No.1 Bharatpur, who vide judgments dated December 3, 2002 and March 11, 2004 convicted and sentenced them as under:-

Vishambhar:
U/s.302 IPC:

To suffer life imprisonment and fine of Rs.1000/-, in default to further suffer one month simple imprisonment.

Shoukat Ghoshi and Prashant @ Dabbu:
U/s.302/34 IPC:

Both to suffer life imprisonment and fine of Rs.1000/-, in default to further suffer one month simple imprisonment.

2. It is the prosecution case that on May 11, 1994 at 11.45 PM at General Hospital Bharatpur informant Rakesh (Pw.2) handed over a written report (Ex.P-1) to SHO Police Station Kotwali Baharatpur stating therein that around 11 PM while his brother Hari Shankar @ Babbal was proceeding with the procession organised on the occasion of `Parshuram Jayanti', some unknown youngesters arrived near the house of Indira Bansal Vakil and took Babbal to the chowk of Subrati Ghoshi. After sometime Babbal came rushing to the road in an injured condition and fell down. He was removed to hospital where he was declared dead. It was further stated that Om Prakash Gaur, Chidiya, Banti @ Sanjeev and Anil had seen the assailants. On that report a case under section 302 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and after completion of investigation charge sheet was filed against appellants Shoukat Ghoshi and Vishambhar only. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1, Bharatpur. Charges under sections 302 and 302/34 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 18 witnesses. In the explanation under Sec.313 CrPC, the appellants

claimed innocence. No witness in support of their defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants vide judgment dated December 3, 2002. After Prashant @ Dabbu was nabbed, separate charge sheet was filed against him and he was tried separately by learned Additional Sessions Judge (Fast Track) No.1, Bharatpur. Charges under sections 302 and 302/34 IPC were framed against Prashant @ Dabbu, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 15 witnesses. In the explanation under Sec.313 Cr.P.C., Prashant @ Dabbu claimed innocence. One witness in support of his defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced Prashant @ Dabbu vide judgment dated March 11, 2004. Since both these appeals relate to the incident occurred on May 11, 1994, we proceed to decide these appeals by a common judgment.

3. We have heard learned counsel for the appellants, learned Public Prosecutor and learned counsel for the complainant.

4. Death of Hari Shankar @ Babbal was undeniably homicidal in nature. As per Post Mortem Report (Ex.P-15) following ante mortem injuries were found on the dead body:-

> Incised wound 4cm x 4cm x cavity deep on left supra clavicular fossa leading to plural cavity.
> Both ends of wound are acute & place obliquely (slightly) on medial side of clavicle. There is associated abrasion found on lower lateral aspect of wound size about 5cm x 5cm, the medial angle of wound is directed toward downward and lat. angle directing to upward.
> On dissection large vessel of neck i.e. lower surface Aorta carotid shows cut on corresponding side i.e. (left) the plural

cavity is found on averted & incised cut wound is found on Apex. Anteriorly plenty of blood found in cavity with clots collapse of lung sec.

In the opinion of Dr. Surendra Kumar Sharma (Pw.13) the cause of death was hemorrhagic shock due to head injury to large vessel of neck and lung.

5. Learned counsel for the appellants criticised the impugned judgment from various angles and urged that the prosecution has suppressed the genesis of the incident therefore it can be inferred that the incident had not occurred in the manner as suggested by the prosecution. It was also contended that the incident had taken place all of sudden without any premeditation and so many persons were participating in the procession, therefore the charges against the appellants are not established beyond reasonable doubt. Moreso, no case under section 302 IPC is made out against the appellants. It is also canvassed that appellants did not share common intention therefore the conviction under section 302/34 IPC deserves to be set aside.

6. Per contra, learned counsel for the complainant, and learned Public Prosecutor, supported the finding of learned trial Judge and urged that appellants were rightly convicted and sentenced.

7. With the help of learned counsel we have scrutinised the material on record. The star witnesses of the prosecution are Sanjeev Vashishtha @ Banti (Pw.5), Sanjeev @ Chidiya (Pw.6), Om Prakash (Pw.8) and Anil Kumar Sharma (Pw.17). Sanjeev Vashistha @ Banti (Pw.5) in his deposition stated that while procession of `Parshuram Jayanti' was

proceeding, he was dancing in the procession with Anil, Chidiya and Sanjeev Gaur. At that point of time Shibbi @ Shiv Kumar told him that three boys had taken Babbal with them. He (Sanjeev) then rushed towards the house where Babbal was taken. On reaching the house he saw that two boys caught hold of Babbal and third boy inflicted knife blow on his neck. After inflicting injury all the boys fled away. In the cross examination this witness admitted that in Sewar Jail Identification Parade was held where he identified two accused. He however did not inform the Magistrate as to who caught hold of the deceased. Testimony of Sanjeev Vashishtha @ Banti gets corroboration from the statements of Sanjeev @ Chidiya (Pw.6), Om Prakash (Pw.8) and Anil Kumar Sharma (Pw.17).

8. Shiv Kumar (Pw.4) in his deposition stated that while the procession was proceeding, he and Babbal got stopped to drink water. Suddenly three persons arrived and took Babbal to the house of Subrati Ghoshi. Dabbu and Shaukat caught hold of Babbal and Vishambhar inflicted knife blow on the neck of Babbal. In the cross examination he however admitted that neither he went to the hospital nor did he disclose the name of assailants. He admitted that he was next door neighbour of the deceased and disclosed the names of assailants only to the Investigating Officer on the next day around 1 PM.

9. Having closely analysed the prosecution evidence we find that it is consistent qua the allegations against appellant Vishambhar only. The fact situation of the case gives rise to the inference that the prosecution is guilty of suppressing the genesis and origin of the occurrence and not presented true version. Shiv Kumar (Pw.4) although went to the hospital did not disclose the names of the culprits. It was on the next day afternoon that he

came out with the names. It also appears that something which has not been completely unravelled might have sparked off the incident. Participation of appellants Shoukat Ghoshi and Prashant @ Dabbu in the incident could not be proved beyond reasonable doubt. Neither their names were mentioned in the FIR nor Sanjeev (Pw.5) could point out that they caught hold of Babbal to facilitate infliction of injuries by Vishambhar. In these circumstances possibility of their over implication cannot be ruled out and they are entitled to benefit of doubt.

10. As already noticed the incident suddenly sparked off while procession was in progress. Since single injury likely to cause death was intentionally caused by Vishambhar that resulted in the death of Babbal, the case of Vishambhar would fall under section 304 Part I IPC.

11. For these reasons, we dispose of the instant appeals in the following terms:-

(i) We allow the appeals of appellants Shoukat Ghoshi and Prashant @ Dabbu and acquit them of the charge under section 302/34 of the Indian Penal Code. Appellants Shoukat Ghoshi and Prashant @ Dabbu are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellant Vishambhar and instead of section 302 we convict him under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.5000/-, in default to further suffer six months rigorous imprisonment.

(iii) Impugned judgment of learned trial court stands modified as indicated above.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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